

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

WEST BEND INSURANCE
COMPANY,

PLAINTIFF

VS.

INTEGRITY BACKYARD BUILDS, LLC;
SERVE VIA CERTIFIED MAIL:

Christopher Thompson
1100 Burlew Boulevard
Owensboro, KY 42303
DEFENDANT

TIMOTHY BROWN
SERVE VIA CERTIFIED MAIL:

11415 N CR 475
Tennyson, Indiana 47637
DEFENDANT

MEGAN BROWN
SERVE VIA CERTIFIED MAIL:

11415 N CR 475
Tennyson, Indiana 47637
DEFENDANT

Electronically Filed
CASE NO. 3:24-cv-38

COMPLAINT FOR DECLARATORY JUDGMENT

Comes the Plaintiff, West Bend Insurance Company (“West Bend”), by counsel, and for its Complaint for Declaratory Judgment against the Defendants, Integrity Backyard Builds, LLC, and Timothy and Megan Brown, states as follows:

PARTIES, VENUE, AND JURISDICTION

1. In accordance with 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, this Court has the power and authority to grant or issue judgment for declaratory relief in cases over which it has jurisdiction, or the Court deems declaratory relief to be appropriate.

2. Plaintiff, West Bend, is a mutual holding company formed in the State of Wisconsin, with its principal place of business in the State of Wisconsin, and is authorized to do, and does, transact business within the Commonwealth of Kentucky, the state where the relevant insurance policy was issued. West Bend is deemed a citizen of Wisconsin for jurisdictional purposes.

3. Defendant, Integrity Backyard Builds, LLC (“Integrity”), is a Kentucky Limited Liability Company. Its members are residents of the Commonwealth of Kentucky. Accordingly, Integrity is a citizen of Kentucky for jurisdictional purposes.

4. On information and belief, Defendant, Timothy Brown, is an individual who resides in the State of Indiana and is deemed a citizen of Indiana for jurisdictional purposes.

5. On information and belief, Defendant, Megan Brown, is an individual who resides in the State of Indiana and is deemed a citizen of Indiana for jurisdictional purposes.

6. This Court has jurisdiction over this action pursuant to 28 U.S.C § 1332(a)(1). There is complete diversity of citizenship between the Plaintiff and the Defendants, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

7. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2), in that a substantial part of the events, acts, or omissions giving rise to the claim occurred in this district.

8. This Court may exercise personal jurisdiction over each of the Defendants.

9. An actual controversy within the meaning of 28 U.S.C. § 2201 exists between the parties.

FACTS

10. Timothy and Megan Brown entered into a Labor and Materials Contract with Integrity Backyard Builds to install a pool, spa and other improvements to their residence at 11415 N CR 475 W, Tennyson, Indiana.

11. On information and belief, Integrity subcontracted the electrical and concrete work to a subcontractor whose identity is unknown to West Bend.

12. Via letter dated September 22, 2022, prior to installation of the pool, Timothy and Megan Brown informed Integrity of the alleged deficiencies in the installation of the pool and spa, including but not limited to, a 14” split in the bottom of the pool, a bulge in the side of the pool, leaking water, and deficiencies associated with the concrete work.¹

13. Integrity allegedly initially attempted to place the pool and spa into service on June 15, 2023.

14. Via letter dated September 21, 2023, Timothy and Megan Brown’s attorney informed Integrity of the alleged defects associated with its work. The Browns’ attorney requested they either pay the Browns the total of \$160,235.00, representing a refund of their purchase price of \$129,235.00, plus the cost of removing all work performed by Integrity, or pay the Browns \$129,235.00, and remove all work completed by it under the contract within 30 days of the correspondence.²

15. On October 19, 2023, Timothy and Megan Brown filed suit against Integrity in Spencer Circuit Court, Indiana, *Timothy and Megan Brown v. Integrity Backyard Builds, LLC*,

¹ **Exhibit A** – Correspondence from the Browns, notifying Integrity of alleged defects.

² **Exhibit B** – Correspondence from the Browns’ counsel with demand for resolution.

Cause No. 74C01-2310-PL-000549 (“Underlying Litigation”), asserting allegations of breach of contract and statutory warranties.

16. West Bend issued a policy of insurance to Integrity, policy no. A89747 02, with a policy period of March 15, 2023, through March 15, 2024, that contained Commercial General Liability (“CGL”) coverage, with a limit of \$1,000,000.00 per occurrence, and Umbrella Coverage, with a limit of \$5,000,000.00 per occurrence.³

17. Integrity has sought indemnity and a defense under the West Bend policy. West Bend is currently providing a defense for the Underlying Litigation under Reservation of Rights.

18. An actual controversy exists because Integrity has sought indemnity and defense under the West Bend policy, for the damages sought in by the Browns in the Underlying Litigation.

COUNT I: Kentucky law applies to the interpretation of West Bend’s policy

19. West Bend’s policy was issued to Integrity in Kentucky.

20. As Integrity is domiciled in and does business in Kentucky, Kentucky is the principal location of the insured risk.

21. Kentucky law applies to the interpretation of West Bend’s policy.

COUNT II: To the extent the claims are not for “property damage” caused by an “occurrence,” there is no coverage under West Bend’s policy

22. West Bend re-alleges, re-avers, reiterates, and incorporates by reference as if set forth fully herein, each averment contained within the preceding paragraphs of this Complaint for Declaratory Judgment.

23. The CGL and Umbrella coverages of West Bend’s policy afford coverage for claims of “property damage” caused by an “occurrence.”

³ **Exhibit C** – Certified copy of West Bend’s policy.

24. “Property damage” is defined in both the CGL and Umbrella coverage forms, in relevant part, as, “Physical injury to tangible property, including all resulting loss of use of that property [,] and, “Loss of use of tangible property that is not physically injured.”

25. “Occurrence” is defined in both the CGL and Umbrella coverage forms, as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

26. To the extent Timothy and Megan Brown’s claims do not constitute “property damage” caused by an “occurrence,” there is no coverage for those claims under West Bend’s policy.

COUNT III: Damage To Property

27. West Bend re-alleges, re-avers, reiterates, and incorporates by reference as set forth fully herein, each and every averment within the preceding paragraphs of this Complaint for Declaratory Judgment.

28. Exclusion j.(6) of the CGL coverage and exclusion m.(6) of the Umbrella coverage of West Bend’s policy expressly exclude coverage for “property damage” to “that particular part of any property that must be restored, repaired or replaced because ‘your work’ was incorrectly performed on it.”

29. The CGL and Umbrella coverages of West Bend’s policy define “your work,” in relevant part, as “work or operations performed by you or on your behalf[] and....materials, parts or equipment furnished in connection with such work or operations[,]” including “warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of ‘your work’ and the providing of or failure to provide warnings or instructions.”

30. The CGL and Umbrella coverage of West Bend's policy define "products-completed operations hazard," in relevant part, as follows:

"Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

....

31. To the extent that the Browns' claims are claims for "property damage" to property "that must be restored, repaired or replaced because 'your work' was incorrectly performed on it[.]" such claims are excluded by West Bend's policy.

COUNT IV: Damage To Your Product

32. West Bend re-alleges, re-avers, reiterates, and incorporates by reference as set forth fully herein, each and every averment within the preceding paragraphs of this Complaint for Declaratory Judgment.

33. The CGL and Umbrella coverage forms of West Bend's policy expressly exclude coverage for "property damage" to "your product" arising out of it or any part of it."

34. To the extent that the Browns' claims arise from "property damage" to "your product" arising out of it or any part of it[,]" such claims are excluded by West Bend's policy.

COUNT V: Damage To Your Work

35. West Bend re-alleges, re-avers, reiterates, and incorporates by reference as set forth fully herein, each and every averment within the preceding paragraphs of this Complaint for Declaratory Judgment.

36. The CGL and Umbrella coverage forms of West Bend's policy expressly exclude coverage for "property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard" unless "the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor."

37. To the extent that the Browns' claims arise out of "property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard[,]" such claims are excluded by West Bend's policy.

COUNT VI: Damage To Impaired Property Or Property Not Physically Injured

38. West Bend re-alleges, re-avers, reiterates, and incorporates by reference as set forth fully herein, each and every averment within the preceding paragraphs of this Complaint for Declaratory Judgment.

39. The CGL and Umbrella coverage forms of West Bend's policy expressly exclude coverage for "property damage" to "impaired property" or "property that has not been physically injured, arising out of...a defect, deficiency, inadequacy or dangerous condition in 'your product' or 'your work'; or a delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms."

40. To the extent that the Browns' claims are claims of "property damage" to "impaired property" or "property that has not been physically injured, arising out of...a defect, deficiency, inadequacy or dangerous condition in 'your product' or 'your work'; or... a delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms[.]" such claims are excluded by West Bend's policy.

COUNT VII: West Bend reserves the right to assert other coverage defenses available under its policy

41. West Bend re-alleges, re-avers, reiterates, and incorporates by reference as set forth fully herein, each and every averment within the preceding paragraphs of this Complaint for Declaratory Judgment.

42. West Bend reserves the right to deny any and/or all claims that have been made, or which may be made in the future, by one or more of the Defendants in this action and/or parties to the Underlying Litigation if West Bend later determines that said claims can be denied under any provision of the applicable insurance policy, including, but not limited to the terms, conditions, exclusions, and/or other policy provisions not specifically set forth herein.

43. West Bend specifically reserves the right to assert any term, condition, exclusion, and/or other provision of any insurance policy issued to Integrity, as it may be applicable to any claim arising out of the facts of this litigation by any individual and/or entity.

WHEREFORE, the Plaintiff, West Bend Insurance Company, prays the Court as follows:

1. For entry of a Declaratory Judgment from this Court, declaring that the Plaintiff, West Bend Insurance Company, has no duty to defend or indemnify Integrity Backyard Builds, LLC, for any damages sought in the Underlying Litigation or otherwise related to the construction of the pool and spa.
2. In the alternative, to the extent there is a duty to defend, for entry of Declaratory Judgment declaring that West Bend Insurance Company has no duty to indemnify Integrity Backyard Builds, LLC, for any damages that are excluded or otherwise not covered under the terms, conditions, exclusions, limitations, and provisions of West Bend's policy of insurance.
3. For an award of its costs sustained herein, including reasonable attorneys' fees (if applicable);
4. For a trial of this cause by Jury; and,
5. For any and all other just and proper relief to which this Court may deem it is entitled.

Respectfully submitted,

RICHARDSON LAW GROUP, PLLC

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